IN THE HIGH COURT OF JUDICATURE AT BOMBAY
O.O.C.J.

Chamber Summons No.1059 of 2007
in
Suit No. 79 of 1987

Zarini R.Irani and another ..Plaintiffs

vs.

Shirin R.Irani and others ..Defendants

Mr.S.H. Karim for plaintiffs
Ms.Geeta Shashtri for defendant no.2

**CORAM: S.C.DHARMADHIKARI J**
**1st October,2007**

**P.C.**

1. Mr.Karim tenders the affidavit of service and the same is taken on record. Ms.Shashtri appears for defendant no.2.

2. This is a chamber summons to bring the heirs and legal representatives of deceased defendant no.5. Defendant no.1 expired as stated in the affidavit in support on 18th January, 1997 but his heirs are defendant nos.2,3, 4 and 5 and plaintiff. One of the heirs of defendant no.1 namely defendant n.5 has also expired.

3. All that is being urged is that there is a considerable delay in taking out the chamber summons and applying for setting aside

the abatement.

4. In my view, considering the fact that liberal principles will have to be applied, while such applications are being entertained so also the fact that defendant no.5 expired leaving behind one of the heirs who has settled abroad. Interest of justice would be subserved if this chamber summons is made absolute in terms of prayers (a) to (c) subject to the plaintiff paying costs quantified at Rs.5000/- to defendant no.2. Costs condition precedent. Upon the costs being paid within a period of two weeks from today, plaintiff to carry out the amendment within a period of two weeks thereafter. Written statement/additional written statement, if any, to be filed within a period of 6 weeks from the date of service of the amended copy of the plaint.

5. The suit to be placed for framing of issues/directions on 19th November, 2007.

6. This order is passed without prejudice to the rights and contentions of the parties on the merits and all pleas including limitation are kept open.

**(S.C.DHARMADHIKARI J.)**